

BEST AVAILABLE COPY



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,846	08/21/2001	Dennis Van De Meulenhof	NL000468	7421
24737	7590	12/06/2004		
PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510			EXAMINER DANG, KHANH	
			ART UNIT	PAPER NUMBER
			2111	

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/933,846

Applicant(s)

VAN DE MEULENHOF ET AL.

Examiner

Khanh Dang

Art Unit

2111

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "status manager," "creation means," status transmission means," "reception means," status reading means," and "status sending means" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-11 are directed to an apparatus. However, the essential structural cooperative relationship(s) between the so-called "status manager," "creation means," "status transmission means," "reception means," "status reading means," and "status sending means" have been omitted, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent,

except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 4-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Gibbs.

As broadly drafted and at best the Examiner can ascertain from the language of the claims, claims 1-11 do not define any structure that differs from Gibbs. With regard to claims 1, 5-10, Gibbs discloses a communication system (10a/b/c) comprising a plurality of devices (30 a-f) interconnected via a bus (IEEE 1394 bus), the bus being capable of handling isochronous and asynchronous transmissions, wherein the communication system (10a/b/c) comprises a status manager having status channel creation means (in compliance with 1394 protocol, all isochronous data are transferred via created channels) for creating on the bus an isochronous status channel and having status transmitting means (in compliance with 1394 protocol, all data including status information must be broadcasted via channels) for transmitting status information (system configuration, available bandwidth, capacity, for example) on the isochronous status channel. With regard to claim 9, the on/off status or the bandwidth status or the distance between nodes in the network is readable as the so-called "level of attachment." Note also that nodes in IEEE1394 are "plug and play" nodes. With regard

to claims 4 and 11, it is clear that all devices or nodes must be able to "read" the status broadcast.

Response to Arguments

Applicants' arguments filed 11/15/2004 have been fully considered but they are not persuasive.

At the outset, Applicants are reminded that claims subject to examination will be given their broadest reasonable interpretation consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997). In fact, the "examiner has the duty of police claim language by giving it the broadest reasonable interpretation." *Springs Window Fashions LP v. Novo Industries, L.P.*, 65 USPQ2d 1862, 1830, (Fed. Cir. 2003). Applicants are also reminded that claimed subject matter not the specification, is the measure of the invention. Disclosure contained in the specification cannot be read into the claims for the purpose of avoiding the prior art. *In re Sporck*, 55 CCPA 743, 386 F.2d, 155 USPQ 687 (1986).

With this in mind, the discussion will focus on how the terms and relationships thereof in the claims are met by the references. Response to any limitations that are not in the claims or any arguments that are irrelevant and/or do not relate to any specific claim language will not be warranted.

The 112 Rejection:

With regard to the 112 rejection, the Examiner disagrees with Applicant's assessment of the MPEP 2172.01 in the amendment filed 11/15/2004.

Applicant argues that "[a]s in the preceding MPEP passage under 2172.01, the term 'essential' cannot properly be ignored in interpreting the meaning of the passages. The latter passage refers to 'essential . . . as defined by applicants in the specification.' This latest MPEP passage is followed by guidance on some of the pitfalls to avoid in attempting to reject a claim for failure to recite essential matter. The described pitfalls relate to seeing essentiality or criticality where it does not exist. From the bottom of page 5 to the top of page 6 the 'Response to Arguments' section of the final Office Action asks us to prove that the Examiner has fallen into one or more of the described pitfalls. The only advice we can provide at this time is to read the instant specification carefully and completely, with regard to what are 'essential elements . . . as defined by applicants) in the specification.' A careful reading of the specification dispels any notion that 'essential' subject matter has been omitted from the claims."

Instead of responding to some of Applicant's unwarranted remarks, the following discussion will focus on key areas where the Examiner believes the Applicant misinterpreted the MPEP 2172.01. At the outset, MPEP 2172.01 is not about "essential subject matter [that] has been omitted from the claims." Rather, MPEP requires interrelation and structural relationships between essential elements in the claims. It is still the Examiner's position that, as defined in the originally filed specification, the so-called "status manager," "creation means," status transmission means," "reception

Art Unit: 2111

means," "status reading means," and "status sending means" are essential elements to the claimed invention. Since they are essential elements as defined by the originally filed specification, their structural cooperative relationships must be provided in the claims. If Applicant does not agree with the Examiner that the so-called "status manager," "creation means," status transmission means," "reception means," "status reading means," and "status sending means", as defined by the specification, are not essential elements to the claimed invention, Applicant is required to state on the record that this is the case.

Applicant's argument is irrelevant to the issue at question, which is an omission of essential structural cooperative relationships. Further, Applicant did not provide any evidence showing that the essential structural cooperative relationships are included in the claims. In any event, Applicant's attention is again directed to MPEP 2172.01 which clearly states that "a claim which fails to interrelate (emphasis added) essential elements of the invention as defined by applicant(s) in the specification may be rejected under 35 U.S.C. 112, second paragraph, for failure to point out and distinctly claim the invention. See *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976); *In re Collier*, 397 F.2d 1003, 158 USPQ 266 (CCPA 1968). It is clear that various recited elements function simultaneously, are directly functionally related, directly intercooperate, and/or serve independent purposes. In light from the guidance from MPEP 2172.01, it is clear that a claim may be rejected for failing to interrelate essential structural cooperative relationships if various recited elements, as disclosed, function simultaneously, are directly intercooperate, and/or serve independent purposes. In the

Art Unit: 2111

instant case, the "elements," identified by the Examiner, function simultaneously, are directly functionally related, directly intercooperate, and/or serve independent purposes as evidenced from the originally filed specification. If Applicant disagrees, it is requested that Applicant provides evidences showing that the identified elements do not function simultaneously, are not directly functionally related, not directly intercooperate, and/or not serve independent purposes; and states on the record that this is the case.

The 102 Rejection:

With regard to claims 1, 10, and 11, Applicant argues that "[t]he Office Action seemingly is citing to IEEE 1394 for the proposition that status information is broadcasted via channels. Firstly, even if we were to regard the latter statement as being correct, the statement does nothing to advance the suggestion by the Office Action that there exists prior art disclosure of "transmitting status information on the isochronous status channel." At the outset, it is again noted that all IEEE 1394 device must strictly adhere to the requirements set forth in IEEE 1394 specification. It is also noted that according to IEEE 1394 specification and Applicant's own acknowledgement that IEEE 1394 nodes communicate via channels. In fact, in IEEE 1394, the isochronous resource manager is readable as the "status manager" including the so-called "status channel creation means" and "status transmitting means." The isochronous resource manager monitors, among other things, the status of available

Art Unit: 2111

bandwidth and notify the nodes of the remaining bandwidth status. Thus, it is clear that at least the available bandwidth information is readable as the so-called "status information." As a matter of fact, the "stream manager" of Gibbs et al. is bandwidth resource manager. See the widely available IEEE 1394 specification or an overview of the IEEE 1394 from the documents cited in the previous Final Office Action. In particular, see IEEE 1394, page 2; and Fire on the Wire, pages 5-7 (cited in the previous Final Office Action). The "only advice" the Examiner "can provide at this time is to read" the documents above "carefully and completely." Another "overview" of IEEE 1394 regarding the use of "channels", cited below, states that "[i]sochronous transfers on the 1394 bus do not target a specific node. Isochronous transfers are broadcast transfers which use channel numbers to determine destination. Channel numbers are 6-bit values which means there are a maximum of 2^6 or 64 channels per bus. A single node on the 1394 bus acts as talker, or data deliverer, on a given channel at any one time. As many nodes on the bus as desired can act as listeners, or data receivers, on a given channel at any one time. The roles of talker and listener on a given channel are not fixed. A node acting as talker at one time on a given channel may subsequently initiate listen transfers on the same channel at some later time. The only restriction is that only one node can talk on a channel at a time. Channels are managed on the 1394 bus by a node acting as an isochronous resource manager." Thus, it is clear that the status information such as available bandwidth must be transmitted via a "status" channel. Applicant further argues that "IEEE 1394 is not cited as a reference in the instant anticipation rejection. We invited the Examiner, in our

Art Unit: 2111

previous Office Action reply, to review the IEEE 1394 standard if the Examiner thinks our invention can be found. Our invention cannot be found in the IEEE 1394 standard."

In response to Applicant's argument, it is never the Examiner's position that Applicant's claimed invention "can be found" in IEEE 1394 standard. As clearly stated on the record, it is the Examiner's position that the claims at question are drafted so broadly that they are readable right on the specification of IEEE 1394. Applicant also argues that "[I]n the 'Response to Arguments' section, page 6, the final Office Action suggests that the isochronous resource manager (111M) of IEEE 1394 constitutes disclosure of claim 1 of the present invention. As support for this proposition, the final Office Action offers nothing more than another equally-unsupported proposition that 'the isochronous resource manager monitors, among other things, the status of available bandwidth and notify the nodes of the remaining bandwidth status.' Even if we were to accept the latter proposition as correct, there does not seem to any support for the proposition that the IRM is a 'status manager' that includes, status channel creation means for creating on the bus an isochronous status channel, and status transmitting means for transmitting status information on the isochronuous status channel." In response to Applicant's argument, instead of responding to Applicants unwarranted remarks, Applicant is again invited to review at least the IEEE 1394, page 2; and Fire on the Wire, pages 5-7, cited in the previous Final Office Action. In the "Fire on the Wire," the isochronuous resource manager assigns a channel number to nodes that request information on the available bandwidth (or the so-called status information." Thus, the so-called "status channel" is created. Further, as explained above, according to IEEE 1394 specification and

Art Unit: 2111

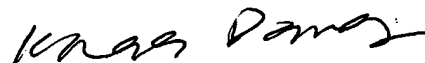
Applicant's own acknowledgement that IEEE 1394 nodes communicate via channels, and at least the available bandwidth information is readable as the so-called "status information." Therefore, the isochronuous status is transmitted via channel.

Allowable Subject Matter

Claims 2 and 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

IEEE 1394 Isochronuous Transfers, Part 1, by Bill McKenzie is cited as relevant art. It presents an overview of IEEE 1394 isochronuous transfers.

Any inquiry concerning this communication should be directed to Khanh Dang at telephone number 703-308-0211.



Khanh Dang
Primary Examiner